

**MINUTES
URBAN COUNTY PLANNING COMMISSION
ZONING ITEMS PUBLIC HEARING**

April 28, 2011

- I. **CALL TO ORDER** – The meeting was called to order at 1:34 p.m. in the Council Chamber, 2nd Floor LFUCG Government Center, 200 East Main Street, Lexington, Kentucky.

Planning Commission members present: Carla Blanton (arrived at 1:36 p.m.); Marie Copeland; Mike Cravens; Mike Owens; Derek Paulsen; Carolyn Richardson, Chair; Lynn Roche-Phillips; and Bill Wilson. Absent were Eunice Beatty, Patrick Brewer, and Ed Holmes.

Planning staff members present: Chris King, Director; Bill Sallee; Barbara Rackers; Jimmy Emmons; Traci Wade; Tom Martin; Cheryl Galt; and Stephanie Cunningham. Other staff members present were: Jim Rebmann, Environmental Planner; Rochelle Boland, Department of Law; Captain Charles Bowen and Firefighter Allen Case, Division of Fire and Emergency Services; and Hillard Newman, Division of Engineering.

- II. **APPROVAL OF MINUTES** – A motion was made by Mr. Owens, seconded by Mr. Cravens, and carried 7-0 (Beatty, Blanton, Brewer, and Holmes absent) to approve the minutes of the March 10, 2011, and March 24, 2011, meetings.

III. **POSTPONEMENTS AND WITHDRAWALS**

Note: Ms. Blanton arrived at this time.

1. **THUNDER PROPERTIES, LLC, ZONING MAP AMENDMENT & COONS PROPERTY, UNIT 11, LOT 2**

- a. MAR 2011-7: THUNDER PROPERTIES, LLC (5/1/11)* - petition for a zone map amendment from a Professional Office (P-1) zone to a Neighborhood Business (B-1) zone, for 2.55 net (3.05 gross) acres, for property located at 4268 Saron Drive (a portion of).

LAND USE PLAN AND PROPOSED USE

The 2007 Comprehensive Plan (Sector 10) recommends Professional Service (PS) future land use for the subject property. The petitioner proposes to rezone the subject property, which is currently vacant, in order to broaden the allowable uses to permit restaurants and retail sales.

The Zoning Committee Recommended: **Postponement** at their meeting on March 3, 2011.

The Staff Recommends: **Disapproval**, for the following reasons:

1. The requested rezoning to a Neighborhood Business (B-1) zone cannot be found to be in agreement with the 2007 Comprehensive Plan, which recommends Professional Service (PS) future land use for the subject property. The Professional Office (P-1) zone was approved by the Urban County Council in 2001, and Professional Service uses were deemed to be appropriate during the 2001 Comprehensive Plan update to provide a land use buffer between the nearby retail to the north and the residential areas to the south.
 2. The proposed B-1 zone is not appropriate for the subject property for the following reasons:
 - a. The existing zoning serves as an appropriate transition in land use between the shopping center and the existing residential uses along Fiddler Creek Way and Chas Circle.
 - b. Neighborhood business uses are more intrusive to the neighborhood than office uses, especially in terms of hours of operation, noise and deliveries by trucks.
 - c. The current zoning allows for a good mixture of land uses in the area (high density residential, a shopping center, a day care center, and medium density residential uses all within the 400-foot notice area) without infringing on the residents of this established neighborhood.
 - d. Retail and restaurant establishments are already plentiful in the area, including the two Tates Creek Shopping Centers with eight restaurants, and two neighborhood business areas at Clearwater Way and Saron Drive, and Duval Street and Tates Creek Road. Therefore, there is not a compelling need for additional commercial uses in this area.
 3. There have been no significant unanticipated changes of a physical, social or economic nature within the immediate area since the Comprehensive Plan was adopted in 2007 that would support B-1 zoning and more intense use than the current zoning allows for the subject property.
- b. ZDP 2011-21: COONS PROPERTY, UNIT 11, LOT 2 (5/1/11)* - located at 4268 Saron Drive & 960 Chas Drive.
(Barrett Partners)

The Subdivision Committee Recommended: **Postponement**. There were questions regarding the proposed building conflicts with various existing easements, and the proposed drive-through lanes. Subsequent to the Subdivision Committee meeting, the staff received a revised version of the plan. With the new revisions, the staff is now recommending approval, subject to the following revised conditions.

* - Denotes date by which Commission must either approve or disapprove request.

The Staff Recommended: **Approval**, subject to the following conditions:

1. Provided the Urban County Council rezones the property B-1 and P-1; otherwise, any Commission action of approval is null and void.
2. Urban County Engineer's acceptance of drainage, storm and sanitary sewers and floodplain information.
3. Urban County Traffic Engineer's approval of parking, circulation, access and street cross-sections.
4. Building Inspection's approval of landscaping and landscape buffers.
5. Urban Forester's approval of tree inventory map.
6. Bike & Pedestrian Planner's approval of bike trails and pedestrian facilities.
7. Department of Environmental Quality's approval of environmentally sensitive areas.
8. Correct note #1.
9. Resolve easement and pond relocation for buildings C, D and E at the time of the Final Development Plan.
10. Addition of street tree information from previous plan.
11. Correct storm water easement dimensions from 15' to 20' per plat.

Petitioner Representation: Tony Barrett, Barrett Partners, was present representing the petitioner. He requested a one-month postponement of this item.

Action: A motion was made by Mr. Cravens, seconded by Mr. Paulsen, and carried 8-0 (Beatty, Brewer, and Holmes absent) to postpone MAR 2011-7 to the May 26, 2011, Planning Commission meeting.

- IV. **LAND SUBDIVISION ITEMS** - The Subdivision Committee met on Thursday, April 7, 2011, at 8:30 a.m. in the Division of Planning Office. The meeting was attended by Commission members: Mike Cravens, Mike Owens, Marie Copeland and Eunice Beatty. Committee members in attendance were: Hillard Newman, Division of Engineering; and Jeff Neal, Division of Traffic Engineering. Staff members in attendance were: Bill Sallee, Tom Martin, Chris Taylor, Barbara Rackers, Denice Bullock, Kenzie Gleason and Roger Daman, as well as Captain Charles Bowen, and Firefighter Allen Case, Division of Fire & Emergency Services; Rochelle Bolland, Law Department, and Bob Carpenter, Division of Building Inspection. The Committee made recommendations on plans as noted.

General Notes

The following automatically apply to all plans listed on this agenda unless a waiver of any specific section is granted by the Planning Commission.

1. All preliminary and final subdivision plans are required to conform to the provisions of Article 5 of the Land Subdivision Regulations.
2. All development plans are required to conform to the provisions of Article 21 of the Zoning Ordinance.

- V. **ZONING ITEMS** - The Zoning Committee met on Thursday, April 7, 2011, at 1:30 p.m. in the Division of Planning Office. The meeting was attended by Commission members Carla Blanton, Ed Holmes, Carolyn Richardson, and William Wilson. The Committee reviewed applications, and made recommendations on zoning items as noted.

A. **ABBREVIATED PUBLIC HEARINGS ON ZONE MAP AMENDMENTS AND RELATED PLANS**

The staff will call for objectors to determine which petitions are eligible for abbreviated hearings.

Abbreviated public hearings will be held on petitions meeting the following criteria:

- The staff has recommended approval of the zone change petition and related plan(s)
- The petitioner concurs with the staff recommendations
- Petitioner waives oral presentation, but may submit written evidence for the record
- There are no objections to the petition

B. **FULL PUBLIC HEARINGS ON ZONE MAP AMENDMENTS AND RELATED PLANS** – Following abbreviated hearings, the remaining petitions will be considered.

The procedure for these hearings is as follows:

- Staff Reports (30 minute maximum)
- Petitioner's report(s) (30 minute maximum)
- Citizen Comments
 - (a) proponents (10 minute maximum OR 3 minutes each)
 - (b) objectors (30 minute maximum) (3 minutes each)
- Rebuttal & Closing Statements
 - (a) petitioner's comments (5 minute maximum)
 - (b) citizen objectors (5 minute maximum)
 - (c) staff comments (5 minute maximum)
- Hearing closed and Commission votes on zone change petition and related plan(s)

Note: Requests for additional time, stating the basis for the request, must be submitted to the staff no later than two days prior to the hearing. The Chair will announce its decision at the outset of the hearing.

1. **LEXINGTON HABITAT FOR HUMANITY, INC., ZONING MAP AMENDMENT & ARLINGTON WEEKLY PAYMENT LOT & INVESTMENT COMPANY ADDITION ZONING DEVELOPMENT PLAN**

- a. MAR 2011-8: LEXINGTON HABITAT FOR HUMANITY, INC. (5/29/11)* - petition for a zone map amendment from a Single-Family Residential (R-1C) zone to a Single-Family Residential (R-1E) zone, for 0.3329 net (0.4017 gross) acre, for property located at 221 Devonia Avenue.

LAND USE PLAN AND PROPOSED USE

The 2007 Comprehensive Plan (Sector 2) recommends Medium Density Residential (MD) future land use for the subject property. The petitioner proposes an R-1E zone in order to subdivide the parcel and construct two single-family dwellings on the subject property.

The Zoning Committee Recommended: **Approval**, for the reason provided by staff.

The Staff Recommends: **Approval**, for the following reason:

1. The request is in agreement with the 2007 Comprehensive Plan for the following reasons:
 - a. The 2007 Comprehensive Plan recommends Medium Density Residential (MD) land use for the subject property, defined as 5-10 dwelling units per net acre.
 - b. The petitioner has requested R-1E zoning, which will permit a residential density of 6.01 dwelling units per net acre. This would be in agreement with the Plan's land use recommendation.
 - c. The R-1E zone will allow residential development more in keeping with the existing character along Devonia Avenue than allowable under the existing zoning.
 2. This recommendation is made subject to approval and certification of PLAN 2011-39P: Arlington Weekly Payment Lot & Investment Company Addition, prior to forwarding a recommendation to the Urban County Council. This certification must be accomplished within two weeks of the Planning Commission's approval.
- b. PLAN 2011-39P: ARLINGTON WEEKLY PAYMENT LOT & INVESTMENT COMPANY ADDITION (5/29/11)* - located at 221 Devonia Avenue. **(Foster – Roland, Inc.)**

The Subdivision Committee Recommended: **Approval**, subject to the following requirements:

1. Provided the Urban County Council rezones the property R-1E; otherwise, any Commission action of approval is null and void.
2. Urban County Engineer's acceptance of drainage, storm, and sanitary sewers.
3. Urban County Traffic Engineer's approval of street cross-sections and access.
4. Building Inspection's approval of landscaping and required street tree information.
5. Approval of street addresses as per e911 staff.
6. Urban Forester's approval of tree protection plan.
7. Add proposed zoning information to site statistics.
8. Denote 20' building line.
9. Denote tree information per Article 5-2(d)(8) of the Land Subdivision Regulations.
10. Denote adjacent property information to the northeast.
11. Denote private utilities providers.
12. Denote date of plan preparation.
13. Delete all certifications.
14. Denote plan preparer per Article 5-2(a) of the Land Subdivision Regulations.

Zoning Presentation: Ms. Wade presented the staff report, briefly orienting the Commission to the location of the subject property on Devonia Avenue. She noted that Devonia Avenue is a local street which connects North Lime-stone Street and Bryan Avenue, inside New Circle Road. The subject property, which is completely surrounded by R-1C zoning, is 14,400 square feet in size, making it the largest lot on the block. The petitioner is proposing to rezone the subject property to R-1E in order to subdivide it into two lots and construct two single-family detached homes. Ms. Wade said that the principal differences between the R-1C and R-1E zones are lot size, yard requirements, and frontage requirements.

Ms. Wade stated that, for the subject property, the 2007 Comprehensive Plan recommends Medium Density Residential land use, which is defined as 5-10 units per net acre. Should the petitioner subdivide the subject property and construct two dwelling units there as proposed, the density would be 6.01 dwelling units per acre, which would be in agreement with the Comprehensive Plan. The location of one structure on the current lot results in a density of three dwelling units per acre, which would not be in agreement with the recommendations of the Comprehensive Plan. As part of their review of this rezoning request, the staff considered the development pattern of the existing surrounding neighborhood, and whether the proposed R-1E zoning would be appropriate at this location. The staff found that, should the subject property be rezoned and subdivided, it would become more similar in size to the other properties

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on the block. In addition, splitting the property, which currently has 100 feet of frontage, into two 50' lots would make it more conforming with the remainder of the homes on the street, which have an average of 50' of frontage.

Ms. Wade noted that the staff also considered the setbacks of the existing homes on the street, and found that they currently average 12 feet. The proposed R-1E zone generally requires a 20' setback, but it does allow for the possibility of averaging the frontage of the existing buildings on each side of the property.

Based on these criteria, the staff found that the existing R-1C zoning was out of character for the subject property, and the proposed R-1E zoning would allow for redevelopment that would be more in character with the existing neighborhood. Therefore, the staff is recommending approval of this rezoning request, for the reasons as listed in the staff report and on the agenda. The Zoning Committee also recommended approval of this request.

Commission Questions: Ms. Roche-Phillips asked if the subject property was the only lot on Devonia Avenue which was zoned R-1C. Ms. Wade answered that all of the homes in the neighborhood are zoned R-1C, but the subject property is the only lot on the block that could potentially be subdivided. Ms. Roche-Phillips asked if rezoning the subject property would create an "island" of R-1E zoning. Ms. Wade responded that, should the property be rezoned to R-1E, it would still be in the R-1 single-family zoning classification, with the principal difference between the two classifications being the lot size requirements.

Preliminary Subdivision Plan Presentation: Mr. Martin presented a rendering of the proposed preliminary subdivision plan, noting that the staff had distributed a list of revised conditions for the plan prior to the start of the hearing. He said that the petitioner is proposing to subdivide the subject property in the middle to create two lots, each with 50 feet of frontage. Each of the proposed lots would exceed 7,200 square feet in size, which is below the 7,500 maximum square footage permitted in the R-1E zone.

Mr. Martin stated that this preliminary subdivision plan was recommended for approval by the Subdivision Committee and the staff. Following the Subdivision Committee meeting, the staff met with the applicant, and the applicant subsequently addressed all of the original "clean-up" conditions on the plan. Mr. Martin noted that the staff is now recommending the following revised conditions for approval of this plan:

The Staff Recommends: **Approval**, subject to the following requirements:

1. Provided the Urban County Council rezones the property R-1E; otherwise, any Commission action of approval is null and void.
2. Urban County Engineer's acceptance of drainage, storm, and sanitary sewers.
3. Urban County Traffic Engineer's approval of street cross-sections and access.
4. Building Inspection's approval of landscaping and required street tree information.
5. Approval of street addresses as per e911 staff.
6. Urban Forester's approval of tree protection plan.
7. ~~Add proposed zoning information to site statistics.~~ Correct Article 15 reference governing the building line.
8. ~~Denote 20' building line.~~
9. ~~Denote tree information per Article 5-2(d)(8) of the Land Subdivision Regulations.~~
10. ~~Denote adjacent property information to the northeast.~~
11. ~~Denote private utilities providers.~~
12. ~~Denote date of plan preparation.~~
13. ~~Delete all certifications.~~
14. ~~Denote plan preparer per Article 5-2(a) of the Land Subdivision Regulations.~~

Commission Questions: Ms. Copeland asked what the setback of the two proposed dwelling units would be. Mr. Martin answered that the setback would be averaged, based on the setbacks on the adjoining properties, which vary by approximately 16 feet. He noted that the home that was previously located on the subject property had a 24' setback from the street's right-of-way. Ms. Copeland said that it appeared that the proposed new homes would be constructed very close to the street, rather than set back one-third the depth of the lots. Mr. Martin responded that the petitioner could choose a more restrictive setback, but Article 15 of the Zoning Ordinance would allow the option of averaging the setbacks of the adjoining properties, which would result in the subject property more closely matching the setback of the surrounding homes.

Petitioner Representation: Myke Robbins, Foster-Roland, said that the petitioner was in agreement with the staff's recommendations, and he requested approval.

Zoning Action: A motion was made by Mr. Owens, seconded by Ms. Roche-Phillips, and carried 8-0 (Beatty, Brewer, and Holmes absent) to approve MAR 2011-8, for the reasons provided by staff.

Preliminary Subdivision Plan Action: A motion was made by Mr. Owens, seconded by Ms. Roche-Phillips, and carried 8-0 (Beatty, Brewer, and Holmes absent) to approve PLAN 2011-39P, subject to the seven revised conditions as recommended by staff.

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3. SRG PROPERTIES, INC., ZONING MAP AMENDMENT & KIRKLEVINGTON NORTH ZONING DEVELOPMENT PLAN

- a. MARV 2011-9: SRG PROPERTIES, INC. (AMD.) (5/29/11)* - amended petition for a zone map amendment from a High Density Residential (R-4) zone to a Professional Office (P-1) zone, for 1.26 net (3.99 gross) acres, for property located at 858 Malabu Drive (a portion of). Dimensional variances are also being requested with this application.

LAND USE PLAN AND PROPOSED USE

The 2007 Comprehensive Plan (Sector 3) recommends High Density Residential (HD) future land use for the subject property. The petitioner proposes to rezone the subject property in order to redevelop it for a professional office building of a similar size to the one located immediately to the north of this site.

The Zoning Committee Recommended: **Approval**, for the reasons provided by staff.

The Staff Recommends: **Approval**, for the following reasons:

1. The requested Professional Office (P-1) zone is appropriate, and the existing High Density Apartment (R-4) zone is no longer appropriate for the subject property, for the following reasons:
 - a. The net developable area of the subject property, which must reasonably be situated parallel to Tates Creek Road due to the existing slope on the site, is physically closer to the adjacent office building to the north, rather than to the residential uses to the northwest and west.
 - b. The existing parking lot on the subject property, which is necessary and proposed to remain, physically separates the developable area of the property from the nearby apartments and condominiums.
 - c. The development of a professional office building on the subject site would result in the proper "step down" in land use intensity from Tates Creek Road to the existing neighborhood.
 - d. The proposed P-1 zoning will be at a depth to the west of Tates Creek Road similar to that associated with P-1 and B-1 zoning for the Lansdowne Shoppes commercial development to the north of this location. Therefore, this zone change could not serve as a negative precedent or otherwise negatively impact the existing residents of the nearby Lansdowne neighborhood.
2. This recommendation is made subject to approval and certification of ZDP 2011-30: Kirklevington North, prior to forwarding a recommendation to the Urban County Council. This certification must be accomplished within two weeks of the Planning Commission's approval.

b. DIMENSIONAL VARIANCES

REQUESTED VARIANCES

1. Floodplain Setback Variance from 25 feet to 7 feet.
2. Landscape Buffer Variance from 10 feet to 2 feet.

The staff will report at the hearing.

- c. ZDP 2011- 30: KIRKLEVINGTON NORTH (5/29/11)* - located at 858 Malabu Drive (near Tates Creek Road).
(Vision Engineering)

The Staff Recommended: **Approval**, subject to the following revised conditions:

1. Provided the Urban County Council rezones the property P-1; otherwise, any Commission action of approval is null and void.
2. Urban County Engineer's acceptance of drainage, storm and sanitary sewers, and floodplain information.
3. Urban County Traffic Engineer's approval of parking, circulation, access, and street cross-sections.
4. Building Inspection's approval of landscaping and landscape buffers.
5. Urban Forester's approval of tree inventory map.
6. Department of Environmental Quality's approval of environmentally sensitive areas.
7. Denote 25' floodplain setback.
8. Resolve sanitary sewer line outside of existing easement (and possible easement).
9. Discuss possible floodplain setback variance (7').
10. Discuss stairway on western property line and its possible connection.

Zoning Presentation: Ms. Wade presented the staff's zoning report, briefly orienting the Commission to the location of the subject property on Malabu Drive near the Tates Creek Road/New Circle Road interchange. Ms. Wade said that the subject property has access to Malabu Drive, but most of the lot's frontage is on Tates Creek Road and the New Circle Road ramp. The subject property sits significantly higher than the interchange ramp, so it was difficult to see the structures that were located there prior to their demolition sometime between 2004 and 2007.

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Ms. Wade stated that the petitioner is requesting the rezoning to the Professional Office (P-1) zone in order to construct a professional office building on a portion of the property that is currently vacant. She displayed several photographs of the subject property and the surrounding area, noting that there are four existing condominium buildings on the property that are proposed to remain. There is also an existing paved parking area that once served the buildings that were demolished, and some existing trees. The petitioner is proposing to construct a building that would be very similar to a nearby structure, with subterranean parking and three stories of offices above.

Ms. Wade stated that the 2007 Comprehensive Plan recommends High Density Residential land use for the subject property, which reflected the use of the property for many years. High Density Residential land use is generally defined as 10-25 dwelling units per net acre. While the requested P-1 zone would allow residential use, the petitioner is not proposing any residences for this site. Therefore, the staff could not find that the requested P-1 zone was in agreement with the Comprehensive Plan and subsequently the appropriateness of the existing and proposed zoning of the subject property. The staff considered the location of the existing parking lot on the west side of the property, which leaves only the portion of the property nearest Bates Creek Road as developable area. That developable area is closer and more oriented to the existing P-1 uses in the vicinity, rather than the residential uses further along Malabu Drive. In addition, the staff considered the limitations on the property due to the slope toward Bates Creek Road, and the location of the land use divide between residential and commercial/office uses in this area. Ms. Wade displayed a photograph rendered to be representative of the break between residential and commercial uses, noting that most of the uses to the west of the property are residential in nature. The subject property is located very near the "break" between uses, and the portion of the property proposed for redevelopment is more oriented toward the business uses and zoning. The use of the property for offices would keep the same depth of commercial/office uses along the Bates Creek Road corridor. The staff also concluded that the subject property could serve as a "step-down" between the more intense residential uses along Bates Creek Road and the residential uses along Malabu Drive. Ms. Wade said that the staff determined that the depth of the proposed P-1 zone is more appropriate for the subject property than the existing R-4 zone, for the reasons as listed in the staff report and on the agenda. She noted that, since the filing of this rezoning request, the petitioner had requested two variances, which Mr. Emmons would present later in this hearing.

Commission Questions: Mr. Owens asked if the residential units to which Ms. Wade referred in her presentation were located on the subject property, or an adjoining property. Ms. Wade responded that the subject property is just one parcel of a larger lot, which does contain residential units. Mr. Owens asked how many residential units are located on the property. Ms. Wade answered that there were four buildings, and each building had four to eight units. Mr. Owens asked if the petitioner intends to create a split-zoned lot. Ms. Wade answered that the petitioner intends to subdivide the property along the proposed zoning boundary. Mr. Owens asked how the fire on the subject property was connected to the demolition of the residential units that were previously located there. Ms. Wade responded that one of the buildings was rendered uninhabitable due to the fire, and was subsequently demolished. The remaining buildings were demolished due to neglect. Mr. Owens asked how many residential units were demolished. Ms. Wade answered that there had been 32 units in those former buildings.

Ms. Roche-Phillips asked how many residential units would be allowed on the subject property under the current residential zoning, or how many units could potentially be lost if the subject property was rezoned to P-1. Ms. Wade answered that the 32 residential units previously located on the property was probably close to the maximum number recommended by the Comprehensive Plan. She noted that, had the former pool area been developed as residences, that number might have been somewhat higher, and added that the staff had not analyzed the potential loss of residential units.

Development Plan Presentation: Mr. Martin presented the corollary preliminary development plan, using a rendered copy of the plan to further orient the Commission to the location of the subject property. He said that the petitioner proposes to construct an 18,000 square-foot structure with associated parking and an access aisle that wraps around the building. The parking requirement for the subject property is 77 spaces, some of which the petitioner proposes to construct under the building. Mr. Martin noted the location of a regulatory floodplain on the subject property, along with the required 25-foot floodplain setback, and mentioned that there is some existing encroachment into the floodplain area that will require a variance. The petitioner proposes to construct a retaining wall along the steep slope area on the property.

Mr. Martin said that the Subdivision Committee recommended approval of this development plan. The staff is also recommending approval, subject to a set of revised conditions, which were drafted following the submission of a revised plan to the staff.

The Staff Recommended: **Approval**, subject to the following revised conditions:

1. Provided the Urban County Council rezones the property P-1; otherwise, any Commission action of approval is null and void.
2. Urban County Engineer's acceptance of drainage, storm and sanitary sewers, and floodplain information.
3. Urban County Traffic Engineer's approval of parking, circulation, access, and street cross-sections.
4. Building Inspection's approval of landscaping and landscape buffers.

5. Urban Forester's approval of tree inventory map.
6. Department of Environmental Quality's approval of environmentally sensitive areas.
- ~~7. Correct Note #8 to reference Article 16 of the Code of Ordinance.~~
- ~~8. Clarify building square footage used relative to required parking.~~
- ~~9. Denote height of building (height to yard ratio).~~
- ~~10. Denote adjoining property owners or Final Record Plat information.~~
- ~~11. Denote Final Record Plat information for subject property.~~
- ~~12. Remove heavy black line in vehicle use area (existing wall).~~
- ~~13. Denote source of floodplain information.~~
- 7.14. Denote 25' floodplain setback.
- 8.15. Discuss sanitary sewer line outside of existing easement (and possible easement).
- 9.16. Discuss possible floodplain setback variance (7').
- 10.17. Discuss stairway on western property line and its possible connection.

Mr. Martin stated that several of the conditions were standard "clean-up" items. He said that the staff discussed condition #5 with the Urban Forester, who indicated that he was concerned about the riparian habitat along the creek, and he wants to ensure that those trees are protected. In order to ensure the protection of the trees, the petitioner will be required to establish a Tree Protection Area at the time of the filing of the final development plan for the property. With regard to condition #6, Mr. Martin said that the environmental planner's approval was required due to the existing steep slopes on the property. Condition #8 refers to the existing sanitary sewer line on the property, which might need to be moved at some point. Should relocation of that line be necessary, the petitioner will be required to establish an easement in order to accommodate it. Mr. Martin noted that, due to the environmentally sensitive nature of the site, a geotechnical report will be required at the time of the final development plan. That report will address all of the environmentally sensitive conditions on the site, including fill, steep slopes, floodplain, and proximity to fault lines. In addition to that report, the petitioner will also be required to submit seismic data to the Division of Building Inspection prior to the issuance of a building permit.

Variance Presentation: Mr. Emmons presented the staff report on the two requested variances, stating that they pertained to the required 10' landscape buffer along an arterial roadway, and the required 25' floodplain setback. He said that the area requested for the landscape variance is located along the New Circle Road on-ramp. In their review, the staff recognized that there is a significant grade change between the on-ramp and the subject property, with the ramp being located approximately 15'-25' lower. Mr. Emmons noted that there is existing dense vegetation in that area, including trees and bush honeysuckle. He said that the Landscape Review Committee was scheduled to meet on April 19th. There was no quorum, but the members who were present had no objections to the requested landscape variance. Mr. Emmons said that the staff was recommending approval of this variance.

With regard to the requested floodplain setback variance, Mr. Emmons stated that the petitioner is proposing to construct the new structure on piers, in order to utilize the steep slope areas of the property, with parking located under the building. He noted that the structure is not proposed to be constructed in the floodplain; rather, it is proposed to be located seven feet away from the floodplain. The Zoning Ordinance requires a 25' setback from a floodplain, which was the reason behind this variance request. Mr. Emmons also noted that this type of commercial structure, built on piers, would actually be permitted in the floodplain under Federal and local requirements if a special permit use was requested from the Division of Engineering. The staff believes, therefore, that the requested seven-foot floodplain setback variance is appropriate for the subject property.

Mr. Emmons displayed a rendered graphic of the proposed building, noting the location of the floodplain, the requested seven-foot floodplain setback, and the proposed retaining wall that would stabilize the subject property during construction. He noted that the petitioner has submitted a Conditional Letter of Map Revision (CLOMR) to FEMA, proposing to modify the location of the floodplain on the subject property. In order for that request to be approved, permission would be required from FEMA, in addition to a special permit use from the local authorities. All of these issues would be required to be completed by the time of the submission of a final development plan for the property. If all of those requests are granted, the proposed structure will be 26' away from the post-development floodplain. The staff is recommending approval of both requested variances, for the following reasons:

The Staff Recommended: **Approval** of the requested variances for landscape buffer area and the floodplain setback, for the following reasons:

- a. Granting the requested variances should not adversely affect the public health, safety or welfare, nor alter the character of the general vicinity. The proposed retaining wall, existing vegetation, and topographic differences between the site and the adjoining roadway will provide a sufficient buffer for the subject property. Since the proposed commercial building on piers could actually be built in the floodplain, simply moving the building closer to the floodplain will not adversely affect public health, safety or welfare.
- b. Approval of the variances will not result in an unreasonable circumvention of the Zoning Ordinance. The purpose of the ordinance related to landscaping is to provide appropriate screening, which will be provided on the property. The purpose of the floodplain ordinance is protection from flooding, which the design of this structure will

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accomplish.

- c. The special circumstances that apply to the subject property that serve to justify the landscape variance are its steep slope, the fact that it is bounded by two arterial roads, and the existing vegetation on the subject property.
- d. Strict application of the requirements of the Zoning Ordinance would create an unnecessary hardship to the applicant, and would likely lead to loss of parking and the functionality of the circulation around the subject site.
- e. The circumstances surrounding this request are not the result of actions taken by the applicant since the adoption of the Zoning Ordinance.

This recommendation of approval is made subject to the following conditions:

1. Provided the Urban County Council rezones the property P-1; otherwise, any Commission action of approval of these conditions is null and void.
2. Should the property be rezoned, it shall be developed in accordance with the approved Development Plan, or as amended by a future Development Plan approved by the Commission, or as a Minor Amendment permitted under Article 21-7 of the Zoning Ordinance.
3. A note shall be placed on the Zoning Development Plan indicating the variance that the Planning Commission has approved for this property (under Article 6-4(c) of the Zoning Ordinance).
4. Prior to any construction, the applicant shall obtain a building permit and all applicable Federal, State, and Local approvals associated with the identified floodplain.
5. Any trees within the New Circle Road right-of-way are not to be removed by the applicant, except as required by the Kentucky Department of Highways or other appropriate governmental entity.

Commission Questions: Mr. Owens asked if this development plan would need to be reviewed by the Floodplain Appeals Committee. Mr. Emmons answered that it would not, since the building is not proposed to be constructed in the floodplain.

Petitioner Representation: Rena Wiseman, attorney, was present representing the petitioner. She stated that the petitioner is in agreement with the staff's recommendations, including the recommended conditions for approval for the rezoning, development plan, and variance requests.

Ms. Wiseman stated that the subject property will be subdivided. She said that the property had been in foreclosure, and that there was "a thick record of code violations" for the former apartments located there, which were in disrepair for many years. The owner eventually defaulted on the loan for the property, which led to foreclosure and, ultimately, to the property being put up for sale by the Master Commissioner. Ms. Wiseman's client owns the adjoining property, and has a contract to purchase just the subject parcel after the property is subdivided. Ms. Wiseman stated that, while she appreciated the Commission members' concerns about losing residential units in the area, she does not believe that there was any interest in developing the subject property for residential use at this time.

Commission Questions: Ms. Copeland said that she would like for someone to speak about the fault zone located in the area of the subject property. Mr. Rebmann stated that there is a fault zone located to the west of Bates Creek Road which traverses directly under the center of the Bates Creek Road/New Circle Road interchange. The subject property is, therefore, close to the fault line, but not exactly on it. Mr. Rebmann noted that the fault line is not active.

Mr. Rebmann also noted that, due to the steep slope areas on the property, a geotechnical report will be required. He will review that report, consider the recommendations of the geotechnical engineer, and ensure that those recommendations are followed during the construction of the proposed building. Mr. Rebmann stated that, due to the environmentally sensitive areas on the subject property, it will be necessary to make certain that the new building is engineered properly.

Mr. Owens asked if the subject property is still appropriate for residential use, and if the P-1 zoning would be more appropriate. He also asked when the other office buildings were constructed on the property. Ms. Wiseman stated that the office building was constructed around 1971. Mr. Owens asked if the residential units on the property were constructed before the office building, or after. Ms. Wiseman answered that the residential units were constructed after the commercial structure. Ms. Wade noted that the residential portion of the property was zoned in 1966 or 1967, and the commercial area was zoned in 1968.

Ms. Roche-Phillips asked if there was any other P-1 zoning along Bates Creek Road, inside of New Circle Road. Ms. Wade responded that P-1 zoning exists on Dove Run Road; on a small tract to the rear of the Signature Club on Lansdowne Drive; and to the north of the Mayfield nursing home. Ms. Roche-Phillips asked if there was any P-1 zoning on Bates Creek Road to the south of New Circle Road. Ms. Wade answered that there is no P-1 zoning to the south between New Circle Road and Redding Road.

Zoning Action: A motion was made by Mr. Cravens, seconded by Mr. Paulsen, and carried 7-1 (Beatty, Brewer, and Holmes absent; Owens opposed) to approve MARV 2011-9, for the reasons provided by staff.

Variance Action: A motion was made by Mr. Cravens, seconded by Mr. Paulsen, and carried 8-0 (Beatty, Brewer, and Holmes absent) to approve the requested landscape buffer and floodplain setback variances, for the reasons provided by staff, subject to the conditions as recommended by staff.

Development Plan Action: A motion was made by Mr. Cravens, seconded by Mr. Paulsen, and carried 8-0 (Beatty, Brewer, and Holmes absent) to approve ZDP 2011-30, for the reasons provided by staff, subject to the nine conditions as listed in the revised staff recommendation.

Note: Chairperson Richardson noted at this time that, due to an upcoming Council meeting in the chamber, this meeting would need to recess briefly, and resume in the Division of Planning Conference Room, on the 7th floor in the Phoenix Building. The recess was declared at 2:25 p.m., and the meeting reconvened at 2:45 p.m. in the Phoenix Building.

C. PUBLIC HEARINGS ON ZONING ORDINANCE TEXT AMENDMENT REQUESTS

1. ZOTA 2011-1: FRONT YARD FENCE RESTRICTIONS - petition for a Zoning Ordinance text amendment to Article 15-4 to limit the allowable height of fencing in front yards and to restrict the construction of fencing abutting public or private streets and public property.

REQUESTED BY: Urban County Council

PROPOSED TEXT: (Note: Text underlined indicates an addition; text ~~dashed through~~ indicates a deletion to the current Zoning Ordinance.)

ARTICLE 15: GENERAL REGULATIONS FOR HEIGHTS, YARDS, WALLS, FENCES, PROJECTIONS, ACCESSORY STRUCTURES and INFILL/REDEVELOPMENT CONSTRUCTION

15-4(b) HEIGHT ~~--In any residential, business (except B-4), or professional office zone, a wall or fence no more than six (6) feet in height may be erected or maintained within a front yard or side street side yard, unless the front or side street side yard is created by abutment to an alley. In that case, a fence or wall may be erected up to eight (8) feet in height. In any side or rear yard, a fence or wall no more than eight (8) feet in height may be erected. No height restriction shall be placed on a wall or fence erected or maintained in any industrial zone or in the Wholesale and Warehouse Business (B-4) zone. The maximum height of walls and fences shall be regulated in accordance with the following table:~~

<u>ZONE</u>	<u>MAXIMUM HEIGHT</u>
1. Any residential or office zone; any business zone other than B-2, B-2A, B-2B or B-4	<p>a. Within 20' of any public or private street right-of-way, except an alley: <u>4 feet</u>, with the following exceptions:</p> <ol style="list-style-type: none"> 1. Where the front or side street side yard abuts an alley: <u>8 feet</u>. 2. Where the property is a double-frontage lot, the frontage abutting an arterial highway or collector street where driveway access is prohibited (e.g., New Circle Road, Man o' War Boulevard, etc.): <u>8 feet</u>. 3. Where the principal structure is less than 20 feet from the street right-of-way: <u>4 feet</u> to the front building plane of the structure; thereafter, <u>6 feet</u>. <p>b. Front, side or rear yard areas greater than 20' from any public or private street right-of-way: <u>6 feet</u> to the front building plane of the structure; thereafter, <u>8 feet</u>.</p> <p>c. Any front or side street side yard abutting a street other than an alley, within 3 feet of the public or private right-of-way: <u>4 feet</u>; greater than 3 feet from the right-of-way: <u>6 feet</u>.</p>

* - Denotes date by which Commission must either approve or disapprove request.

<u>2. Any B-2, B-2A or B-2B zone</u>	<u>a. Front yard: 6 feet</u>
	<u>b. Side or Rear Yard: 8 feet</u>
<u>3. Any agricultural, B-4 or Industrial Zone</u>	<u>a. No limitation</u>

For the purpose of this section, the height of a wall or fence shall be the vertical distance from the established grade at the fence or wall to the top of the fence or wall.

15-4(c) FENCE ORIENTATION ABUTTING PUBLIC PROPERTY - In all zones other than agricultural zones, where fencing is located adjacent to a public street, park, or other publicly owned property the fencing shall be installed with the structural members or framing directed inward toward the property.

Staff Alternative Text (leaving all other text as proposed):

- c. Any ~~front or~~ side street side yard abutting a street other than an alley, within 3 feet of the public or private right-of-way: **4 feet**; greater than 3 feet from the right-of-way: **6 feet**.

The Zoning Committee Recommended: **Approval**, for the reasons provided by staff.

The Staff Recommends: **Approval, including the Staff Alternative Text**, for the following reasons:

1. Front yard fences and walls have been reported throughout the community to create a safety and sight distance triangle conflict for drivers and pedestrians where front yard and side street side yard fences abut a right-of-way and/or are in excess of 6 feet in height.
2. The proposed text amendment will limit the allowable height of fences and walls within the first 20 feet from the right-of-way, which has been deemed the area of most conflict. The proposed text amendment will significantly improve the safety of residential, office and business areas.
3. Research indicates that many communities are more restrictive in the regulation of front yard fences than for those in side and rear yards. The proposed text amendment will appropriately strengthen Lexington-Fayette County's fence regulations.

Staff Presentation: Ms. Wade began the staff's presentation by noting that, since the Urban County Council had initiated this text amendment in March, the Planning Commission must consider it within 60 days (by May 13th). The proposed text amendment was intended to refine fencing requirements by zoning category, and to limit some fencing in the residential, office, and some business zones. It would, however, allow more flexibility in the B-2, B-4, industrial, and agricultural zones.

Ms. Wade stated that the current fence Ordinance restricts front-yard fences very liberally compared to other cities' ordinances that the staff had reviewed as part of their research of this issue. Under the current Ordinance, front-yard fences are permitted in the front all the way up to the sidewalk, and up to six feet in height in the front and side yards. Behind the building line, fences can be up to eight feet tall in side and rear yards.

Ms. Wade said that the proposed revision to the fence Ordinance came about due to reported sight distance issues in residential areas, as drivers discovered that they had conflicts with pedestrians, cyclists, and other vehicles in the right-of-way when they were backing out of driveways. Those concerns spurred discussion among the members of the Council Planning Committee, who asked the Planning staff to do some general research on fencing requirements. The Planning Committee members were also concerned about the negative impact of front yard fences on neighborhood character. As part of their research, the staff prepared an analysis of zoning restrictions for fencing in 20 other cities around the country, copies of which were distributed to the Commission members prior to this hearing. The Planning Committee asked the staff to focus on: the height restrictions on front yard fences; any restrictions on fences for corner lots; any opacity restrictions; and any setback restrictions or requirements from the right-of-way. In reviewing the information from those 20 cities, the staff found that 90% restricted the height of fences to either three or four feet in the front yard; 80% restricted fence height on corner lots; 35% restricted opacity in some form; and 25% required a setback from the right-of-way. Ms. Wade said that the Planning Committee also consulted with the Divisions of Building Inspection and Code Enforcement to determine the extent to which opacity restrictions could be enforceable. Those divisions reported that it would be difficult to gauge the opacity of fencing at the time of the issuance of a building permit without seeing a physical sample of a fence panel. In addition, opacity regulations could eliminate stone and masonry fencing, while allowing chain link, which seemed counterintuitive to the desired effect of the proposed changes to the Ordinance.

With regard to the proposed changes to the text of the Zoning Ordinance, Ms. Wade stated that the allowable height of front yard fencing would be reduced from six feet to four feet. The four-foot height would be allowed from the sidewalk or right-of-way line back to the 20' setback. Past the 20' setback, a fence up to six feet in height would be allowed to the 30' building line. Past that 30' building line, a fence up to eight feet in height would be allowed in side and rear yards. In instances where non-conforming structures were located in front of either the building line or the 20' setback, a four-foot fence would be allowed up to the front of the building. Past the front of the building (in the side yard) to the 30' building line, a six-foot fence

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would be allowed; and past the 30' building line, an eight-foot fence would be allowed in the rear yard. Ms. Wade said that, with regard to corner lots, the Council Planning Committee recognized that fenced areas on those lots function differently. Four-foot front yard fences would be allowed within a three-foot setback from the sidewalk or right-of-way line; six-foot fences would be allowed from the three-foot setback to the 20' setback; and eight-foot fences would be allowed past the 20' line.

Ms. Wade stated that, following the Planning Commission Work Session where this proposed text amendment was discussed, the staff recognized that the proposed changes to fencing might be difficult to grasp without some type of visual rendering. The staff prepared a graphic depicting the various details of the proposed changes, which Ms. Wade displayed for the Commission members, noting the applicable setbacks, building lines, and residential structures. She noted that the Division of Building Inspection had expressed some concerns about sight distance on corner lots. In some instances, a rear yard for a corner lot (which could have a fence up to eight feet in height) could be the side yard for another lot. The Division of Building Inspection was concerned that drivers backing out of driveways in those configurations might not be able to see pedestrians, cyclists, or other vehicles. The proposed three-foot setback wherein a four-foot fence would be allowed was proposed to mitigate those situations, with the idea that drivers would be able to see over a four-foot fence. Ms. Wade said that the staff believes that that three-foot setback should allow for sufficient visibility in those situations. She displayed several photographs of fences that are currently permitted in Fayette County, noting which fences would still be allowed under the proposed changes to the Zoning Ordinance, and others that would not.

Ms. Wade stated that the other proposed amendment to the Zoning Ordinance pertains to the structural members of fencing. The Council's initiated text amendment requires that the cross-members of all fences face the inside of the property in areas that adjoin public spaces, in order to deter people from climbing those fences, and for aesthetic purposes.

Ms. Wade said that the staff had one small tweak to the text originally proposed by the Council to clarify the difference between side street side yards and front yards. She stated that the staff is recommending approval of the remainder of the Council's ordinance, including the staff alternative text, for the reasons as listed in the staff report and on the agenda.

Commission Questions: Mr. Owens asked, with regard to corner lot fences, if the staff had any photographs with examples of those situations. Ms. Wade answered that they did not. Mr. Owens stated that he was concerned about instances in which a corner lot has a driveway that accesses a side street, and the implications to the rear yard. Ms. Wade stated that the rear yard would be protected by a six-foot fence. Mr. Owens said that he believed that the proposed restrictions for corner lots could result in fencing of several different heights for one lot, which could look awkward.

Director Comments: Mr. King stated that he believed that it was very unlikely that property owners would "stair-step" fencing on their property. He believed that it would be more likely that property owners would choose one consistent height for fencing in those situations. Mr. King said that the intent was to avoid brick walls located on corner lots right against the sidewalk, which can severely restrict sight distance, without completely preventing corner lot property owners from fencing their rear yards. He noted that there were many walls in the Chevy Chase area that would become non-conforming if the proposed changes to the Ordinance were approved.

Ms. Blanton said that it appeared that, even with just a four-foot fence located three feet off the sidewalk, visibility could still be restricted enough to cause a driver to hit a cyclist or pedestrian on the sidewalk. Ms. Wade responded that the staff does not believe that there are many lots with that configuration in Lexington. She said that, in most subdivisions, the faces of the houses are oriented consistently, even on corner lots. Ms. Wade noted that, should the Commission be concerned about those situations, they could explore the possibility of extending the proposed three-foot setback to six, eight, or even 20 feet, but they needed to be aware that that could alter the level of privacy allowable on corner lots.

Ms. Roche-Phillips asked if there were any restrictions on shrubbery height. Ms. Wade answered that there are currently no restrictions on the height of shrubs. Mr. King stated that the proposed text amendment does not address shrub height, but there are other sight distance requirements in place. The staff originally proposed to Council to create a violation under the Code of Ordinances called a "sight distance hazard," but that option was not pursued.

Director Comments: Mr. King added that the proposed text amendments also do not take vertical sight distances into consideration. When Planning staff proposed to address that issue, the Council decided that that was too complicated to deal with at this time. The Council was also concerned about delving too deeply into issues of aesthetics. Mr. King noted that the text amendment proposed today was the result of approximately 18 months of work with the Council Planning Committee.

Ms. Wade stated that, if the Planning Commission believes that the proposed three-foot setback from the sidewalk is not large enough, they could make a recommendation to increase it.

Mr. Cravens asked why the proposed text amendments would allow fences over the front building line. Ms. Wade answered that removing them completely would eliminate all front yard fences, including retaining walls. Mr. Cravens stated that it might be more appropriate to make a distinction between fences and walls, and completely prohibit front yard fences.

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Ms. Copeland stated that she believed that the proposed text amendment was a great starting point, but the issue of front yard fences was a "landscape architecture problem," and there were no landscape architects involved in drafting the text. She added that maintenance, Secure by Design issues, ADA compliance, and opacity had not been satisfactorily addressed, since the proposed text came strictly from a sight distance point of view. Ms. Copeland said that she believes that, by focusing strictly on sight distance, the proposed text gives the impression that none of the other issues are important. She believed that fences should not be allowed to be built up to the sidewalk, in order to provide "passing space" for two wheelchairs on the sidewalk. Ms. Wade noted that she did not believe that two wheelchairs could pass on a four-foot sidewalk, which was standard in most subdivisions in Fayette County. Ms. Copeland said that she does not believe that the proposed text amendment provides sufficient accommodation for the handicapped, and she was concerned that the Bike & Pedestrian Planner was not involved in the drafting of the text. She added that, when the landscape buffer Ordinance was created in the 1970s, a task force of landscape architects and nursery owners was created to "take the heat off of the staff" and address the issue of landscaping. Ms. Copeland asked if it would be possible to take the time and hire consultants or establish a task force to pursue a similar process to study the issue of fencing.

Director Comments: Mr. King stated that the Council initiated this text amendment in March, and the Planning Commission must take some kind of action on it within 60 days. He said that, if the Planning Commission does not like it, they could recommend disapproval and add a recommendation that the Council re-consider this issue. Mr. King noted that he was involved in the process to which Ms. Copeland referred, and that group "started at zero," because there were no landscaping requirements or regulations at that time. He said that that task force faced a basic threshold question about landscaping in the community, and they worked for a very long time to draft the text amendments.

Ms. Copeland stated that there could be a "wall group" and a "fence group," who could consider the regulations in areas where tourism is a major industry. Those groups could then model a set of text amendments on the successful examples of those regulations, where downtown areas are considered amenities and a high value is placed on tourism. Ms. Wade noted that the text amendments proposed at this time would not affect the downtown zones. Ms. Copeland said that the issue of fencing is "directly related to the ability to market our urban center as a tourist-attractive, historic preservation amenity."

Mr. Paulsen noted that he did not believe that many residential developers and property owners would consider constructing tall fences in front yards, since it is not aesthetically pleasing. Ms. Copeland stated that it had been done on Cooper Drive. She said that, as the community gets denser, it is happening more often. She noted that she is aware of one residence that has an eight-foot front yard fence in order to conceal a storage center in the home's back yard, which essentially created an industrial site in a residential neighborhood. Ms. Copeland said that she could not support the proposed text amendment. She reiterated that she believed that it would be best to assemble a group of landscape architecture professionals to draft a "better example of what is possible."

Ms. Roche-Phillips asked what the genesis was for the proposed text amendment. Mr. King answered that Council Member Blues had approached him with an issue he had dealt with in his neighborhood, where sight distance was a major concern. There had also been an instance in which a six-foot concrete wall was constructed around the entire front yard on one property, which was of great concern to the neighbors. Mr. King said that the Planning Committee considered plantings, topography, fences, ornamental features, and other items in order to try to regulate them as an enhancement of the current sight distance requirements. The Committee was aware that the proposed text amendment would not completely resolve the issues, but could improve them significantly.

Ms. Copeland stated that, if Lexington becomes 25% more dense inside New Circle Road as is desired, it will become more important to have "borrowed space." She said that fences can give the impression of being more restricted, particularly if they are over three feet tall.

Mr. Cravens said that it is also important for homeowners to have a sense of "defensible space." He added that he would not be in favor of allowing fences over three feet in height in front of the building line, since that could make neighborhoods look unattractive. Ms. Copeland agreed, and added that side yard fences could restrict the visibility of some homeowners' front doors. Mr. Owens stated that he agreed that six-foot fences should not be permitted in front of the building line. Mr. King asked if Mr. Owens was referring to the prescribed building line, or the front face of the structure. Mr. Owens answered that he was referring to the front face of the structure. Mr. Cravens stated that he believes that side-yard fences on corner lots should be restricted to less than six feet in height, as well. Ms. Wade asked Mr. King to explain how the Planning Committee arrived at the recommendation to allow six-foot fences in front of the building line.

Director Comments: Mr. King stated that that recommendation evolved through the discussions with the Planning Committee, and represented an attempt to avoid the filing of variance requests for fencing.

Mr. Paulsen stated that one of the Goals of the Comprehensive Plan is to provide well-designed communities. He said that he does not believe that allowing high fences in front yards would support that Goal.

Mr. Sallee said that, from the staff's perspective, the proposed text amendment will add additional restrictions that are not currently in place.

Ms. Copeland stated that she believed it would not be difficult to regulate opacity by photographing the fence in question and calculating the amount of light and dark with a planimeter. Mr. King responded that that calculation could not be performed using a photograph or a site plan. He said that it would require an inspection of each fence. Ms. Boland noted that the degree of light and dark in a photograph could vary based on the angle at which the photograph was taken, as well as a number of other factors. Ms. Roche-Phillips stated that perhaps opacity would no longer be an issue if taller fences were prohibited in front of the building line.

Ms. Richardson asked how the Planning Commission should proceed, since it was clear that several of the members were not in favor of the text amendment as proposed. Ms. Boland answered that the Planning Commission could make a recommendation of disapproval, and then include a recommendation for an alternative text. She added that the statute prescribes how a Zoning Ordinance text amendment must be handled. Since Council initiated this text amendment, they could agree with the Planning Commission and initiate their proposed alternative. However, any alternative text that is proposed would be significantly different from the original text, so it would need to go through the entire notification and public hearing process again. Ms. Boland noted that, if the Council chose to go forward with an altered recommendation from the Planning Commission without re-starting the process, the public could feel that the procedures had been circumvented unfairly.

Ms. Roche-Phillips asked if the Commission should recommend disapproval of the text as presented, and then make a recommendation for alternative text. Mr. King answered that, if the Commission has other specific changes that they agree on, they can recommend alternative text. However, they could simply recommend disapproval. Mr. Paulsen asked if the Commission could recommend disapproval, and include comments about the issues with which they disagree. Mr. King responded that the minutes of this hearing would be forwarded to the Council with the Final Report for this text amendment, so the Council would have the opportunity to review all their comments. Mr. Paulsen said that he did not believe that the Commission could agree on a recommendation at this meeting.

Ms. Blanton asked if it was possible to eliminate all front yard fences with the exception of wrought iron fencing in historic areas. Mr. Owens said that he would be in favor of limiting the height of fences to four feet in front of the building line. Mr. King answered that the Commission could recommend disapproval of the proposed text, and then recommend an alternative that would restrict the height of fencing to four feet between the front face of the building and the right-of-way.

Mr. Owens asked if the Planning Commission could carry this item over to their meeting on May 13th, in order to prepare an alternate recommendation, or if they should simply recommend disapproval of the proposed text today. Mr. King responded that either of those would be a valid option. He said that, if the Commission had a consensus on an alternate recommendation, he would suggest that they finish this item today. Ms. Wade added that, if the Commission would like for the staff to prepare a draft of their proposed changes, it would be helpful for them to have the next two weeks to do so.

Mr. Cravens asked if fences or walls around subdivisions would be affected by the proposed text amendment, since they are typically up to the right-of-way but do not cross the building line of a house. Mr. Saltee responded that such fences are often located on corner lots at the entrance to subdivisions. Mr. Cravens said that he did not want to prohibit those types of fences or walls.

Ms. Richardson stated that it did not appear to her that the Commission would be able to reach an agreement on an alternative recommendation today.

Ms. Roche-Phillips stated that she was prepared to make a motion to disapprove this item and have the staff reconsider the proposed text with the Commission's comments in mind.

Director Comment: Mr. King noted that, if the Commission wanted the staff to draft an alternate text to send to the Council, they would need to make a motion to continue this hearing, and a separate motion to draft a specific set of recommendations. He asked, for clarification, if the Commission wanted to prepare an alternate text that would restrict the height of any fence between the front wall the building and the right-of-way to no higher than four feet. He said that, if that was not the intention of the Commission, they should recommend disapproval to the Council.

Ms. Copeland stated that she would support a recommendation as suggested by Mr. King, but adding an additional restriction to require 50% opacity. Mr. King responded that he believed that any recommendation with regard to opacity or permeability of fencing would be problematic, as those qualities are difficult to enforce. He added that the staff and the Planning Committee had spent 18 months drafting the proposed text, so they were aware of the types of recommendations that could be problematic.

Mr. Paulsen asked if the Commission could ask the staff to draft text restricting fence height to four feet, and recommending that permeability be addressed. Mr. King answered that he did believe the staff could draft the text on such a complicated issue in two weeks. Mr. Paulsen asked if the Commission could recommend that the staff conduct research on permeability. Mr. King responded that the staff had conducted that research as part of the process of drafting the current recommended text and Ms. Wade's presentation covered a summary of that information.

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Ms. Richardson asked, should the Commission make a recommendation of disapproval to the Council, if the staff could include an explanation of their concerns without the Commission making a formal motion. Mr. King answered that the Commission could do so, and could send a list of suggestions to the Council and ask them to put the issue back in Committee. He noted that it would be up to the Council whether or not they chose to follow the Commission's recommendation.

Ms. Copeland asked if the Commission could include a suggestion to form a task force of landscape architecture professionals, rather than Council members and staff, to consider this issue. Mr. King responded that the Council was unlikely to see the creation of a task force to work on architectural design controls for fences as being worthy of the amount of staff time that would be involved, but that decision would be up to the Council.

Ms. Richardson asked if Mr. King was suggesting that it would be appropriate for the Commission to make specific recommendations to the Council; and, if so, what form those recommendations should take. Mr. King answered that the Commission could make a separate motion for their recommendations. He noted that the Commission must make some type of recommendation on the text amendment as proposed. Ms. Boland suggested that the Commission make two motions: one to address the text as proposed, and the other for the list of recommendations. She noted that the report that will be forwarded to the Council, along with the Commission's recommendation, would explain the second motion.

Action: A motion was made by Ms. Roche-Phillips, seconded by Mr. Owens, and carried 8-0 (Beatty, Brewer, and Holmes absent) to disapprove ZOTA 2011-1, because the Planning Commission does not agree that the standards are correct as proposed.

Action: A motion was made by Mr. Roche-Phillips, seconded by Mr. Paulsen, and carried 8-0 (Beatty, Brewer, and Holmes absent) that the following additional factors need to be forwarded to the Council for their consideration:

- 1) Decrease the height of fences in the front yard (in front of the building plane) to four feet, including side street side yards
- 2) Make an exception for subdivision entrance walls
- 3) Treat fences differently from walls
- 4) Consider ADA compliance when determining the fence setback from the sidewalk
- 5) Consider regulating permeability or opacity

2. ZOTA 2011-2: CATERING AND COMMISSARIES IN THE B-4 AND OTHER ZONES - petition for a Zoning Ordinance text amendment to Articles 1 and 8, to: define catering in Article 1-11; allow catering as a principal use in the B-3, B-4, I-1 and I-2 zones; allow catering as an accessory use to restaurants in the B-1 zone; and add catering establishments to the listing of prohibited uses in agricultural and residential zones.

REQUESTED BY: Urban County Planning Commission

PROPOSED TEXT: (Note: Text underlined is an addition, while text ~~dashed through~~ is a deletion to the current Zoning Ordinance.)

ARTICLE 1: GENERAL PROVISIONS AND DEFINITIONS

1-11 DEFINITIONS

CATERING – The preparation of food and meals on the premises; and where such food and meals are to be delivered off premises for consumption at a social, business, or civic function, but not to include a commissary. This type of establishment may also provide service at the function.

ARTICLE 8: SCHEDULE OF ZONES

AGRICULTURAL RURAL (A-R) ZONE

8-1(e) Prohibited Uses

26. Commissaries and catering.

AGRICULTURAL BUFFER (A-B) ZONE

8-2(e) Prohibited Uses

32. Commissaries and catering.

AGRICULTURAL NATURAL AREAS (A-N) ZONE

8-3(e) Prohibited Uses

32. Commissaries and catering.

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NEIGHBORHOOD BUSINESS (B-1) ZONE

8-16(c) Accessory Uses (Uses and structures which are customarily accessory, clearly incidental and subordinate to permitted uses.)

9. Catering, but only when accessory to a restaurant permitted under Section 8-16(b).

HIGHWAY SERVICE BUSINESS (B-3) ZONE

8-20(b) Principal Uses (Other uses substantially similar to those listed herein shall also be deemed permitted.)

26. Commissaries for preparation of food for restaurant use and catering.

8-20(n) Off-Street Parking (See Article 16 for additional parking regulations.)

- Commissaries and Catering - One (1) space for every six hundred (600) square feet of floor area, with a minimum of five (5) spaces.

WHOLESALE AND WAREHOUSE BUSINESS (B-4) ZONE

8-21(b) Principal Uses (Other uses substantially similar to those listed herein shall also be deemed permitted.)

2. Shops of special trade and general contractors, such as plumbing; heating; carpentry; masonry; painting; plastering; metal work; printing; publishing; lithographing; engraving; electrical; major automobile and truck repairing; sign painting; upholstery; tile, mosaic and terrazzo work; electroplating; interior decorating; commissaries and catering.

8-21(n) Off-Street Parking - (See Article 16 for additional parking regulations.)

- Commissaries and Catering - One (1) space for every six hundred (600) square feet of floor area, with a minimum of five (5) spaces.

LIGHT INDUSTRIAL (I-1) ZONE

8-22(b) Principal Uses (Other uses substantially similar to those listed herein shall also be deemed permitted.)

1. The principal permitted uses in the B-4 zone.
4. Other industrial and manufacturing uses, such as auto parts rebuilding; battery manufacturing; beverage manufacturing; micro-brewery as regulated by KRS 243.157 and KRS 243.150; dairy and non-dairy and food and non-food product bottling plants; box and crate assembly; building materials sales; rental storage yard; bag, carpet and rug cleaning and dyeing; cabinet shop; cannery; ~~eaters~~; cooperage; crematory; dextrine and starch manufacturing; enameling, lacquering, and japanning; felt manufacturing; electric foundry; furniture manufacturing; heating equipment manufacturing; inflammable under-ground liquid storage; iron works (ornamental), and wire drawing; parcel delivery stations; phonograph record manufacturing; public utility service yard; radium extraction; railway or truck terminal; stone monument works; tool manufacturing; vehicle storage yards for which occupancy permits were issued prior to May 1, 1985; welding, and other metal working shops.

Staff Alternative Text (leaving all other text as proposed)

(Note: Text underlined and italicized is an addition, while text ~~dashed through and italicized~~ is a deletion to the text initiated by the Planning Commission.)

AGRICULTURAL RURAL (A-R) ZONE

8-1(e) Prohibited Uses

26. Commissaries and catering as a principal use.

AGRICULTURAL BUFFER (A-B) ZONE

8-2(e) Prohibited Uses

32. Commissaries and catering as a principal use.

AGRICULTURAL NATURAL AREAS (A-N) ZONE

8-3(e) Prohibited Uses

32. Commissaries and catering as a principal use.

NEIGHBORHOOD BUSINESS (B-1) ZONE

8-16(c) Accessory Uses (Uses and structures which are customarily accessory, clearly incidental and subordinate to permitted uses.)

9. Catering, but only when ~~accessory to associated with~~ a restaurant permitted under ~~Section Article~~ 8-16(b).

DOWNTOWN BUSINESS (B-2) ZONE

8-17(c) Accessory Uses

7. Catering, but only when associated with a restaurant permitted under Article 8-17(b).

* - Denotes date by which Commission must either approve or disapprove request.

LEXINGTON CENTER BUSINESS (B-2B) ZONE

8-19(c) Accessory Uses

8. Catering, but only when associated with a restaurant permitted under Article 8-19(b).

The Zoning Committee Recommended: **Approval**, for the reasons provided by staff.

The Staff Recommends: **Approval, including the Staff Alternative Text**, for the following reasons:

1. Catering is (and has been in the past) reasonably considered similar to a shop of special trade, which is a principal permitted use in the Wholesale and Warehouse (B-4) zone, pursuant to Article 8-21(b)2 of the Zoning Ordinance. Special skills and training are involved, and the product is distributed in a manner characteristic of many typical wholesale business uses.
2. Likewise, catering is reasonably considered similar to a commissary in that both involve the preparation of food in a commercial kitchen for consumption at another location. Commissaries are a principal permitted use in the Highway Service Business (B-3) zone, pursuant to Article 8-20(b)26 of the Zoning Ordinance.
3. Catering has been determined by the Board of Adjustment to be an appropriate accessory use to restaurants or cafés in the Neighborhood Business (B-1) zone, because catering is substantially similar to a delivery service that is currently allowable for restaurants.
4. Catering establishments and their necessary commercial kitchens and delivery trucks of varying sizes should continue to be prohibited as a principal use in agricultural zones and in residential zones due to the possible negative impact to the rural environment and existing residential neighborhoods.
5. The Zoning Ordinance is needlessly strict in its regulation of catering establishments. The proposed amendments to the Ordinance will allow many catering uses already established to clearly become conforming uses and will clarify the regulations for restaurants that already offer catering services.

Staff Presentation: Ms. Wade presented the staff report, noting that the Planning Commission initiated this Zoning Ordinance text amendment in March. She said that catering is currently a permitted use in the I-1, I-2, and P-2 zones. In February of this year, a request was filed with the Division of Building Inspection to establish a catering operation in a B-4 zone. It was refused and the applicant appealed to the Board of Adjustment. As part of the research for their report to the Board of Adjustment on that request, the staff found that the Division of Building Inspection had, in the past, considered catering as a wholesale business or shop of special trade, but had changed their interpretation in the past 15 years. The applicant in that case researched the issue, and discovered that caterers had been permitted--and were existing--in zones other than the I-1, I-2 or P-2 zones. That discovery spurred the staff to consider which zones would be appropriate for catering establishments, and whether catering should be considered as an allowable accessory use to restaurants. The Division of Building Inspection currently permits catering as an accessory use to restaurants, but it is not explicitly permitted in the Zoning Ordinance. Catering has also been allowed as accessory to conditional uses in the agricultural zones, and accessory to delis or cafes in the B-1 zone.

Ms. Wade stated that the proposed text amendment would allow catering to be considered as a B-4 use, and also as accessory to restaurants in the B-1, B-6P, B-2, and B-3 zones, since it is very similar to a commissary use, where food is prepared for transport to a restaurant site. The staff requested Planning Commission initiation of this text amendment in order to define catering.

Ms. Wade said that a question had been presented during the Commission's discussion of this proposed text amendment at their last work session with regard to catering as an accessory use in agricultural areas. In response to that question, the staff drafted alternative text language to clarify that catering would not be allowed as a principal use in the A-B, A-N, and A-R zones. The alternative text would also add catering as an accessory use to restaurants in the B-2 and B-2B zones. Ms. Wade stated that the staff was recommending approval of the alternative text, for the reasons as listed in the staff report and on the agenda, and that the Zoning Committee recommended approval as well.

Commission Questions: Ms. Copeland asked, with regard to wineries that grow fewer than 10 acres of grapes and are used as "party barns," if the proposed text amendment would allow them to frequently hold weddings or other parties on their premises. Ms. Wade answered that the primary question in analyzing those situations is where the food preparation occurs, rather than where the food is actually served. The location where the food is actually prepared would serve as the location of the catering business. Ms. Wade added that, unless the operator of an existing winery should desire to open a catering business on their premises as well, it should not become an issue.

Mr. Wilson asked if caterers typically prepare food on site for functions in agricultural areas; and, if so, how the proposed text amendment would affect that activity. Ms. Wade responded that, typically, some food items are prepared at the site but most are brought in for a particular function.

Legal Comment: Ms. Boland stated that any preparation of food at those events in the agricultural zones is accessory; the caterers would not be considered to be operating their business from that location. She noted that a text amendment cannot address where caterers are allowed to serve food. Rather, the proposed text amendment was intended to define the zones in which a caterer can locate their main business site.

* - Denotes date by which Commission must either approve or disapprove request.

Ms. Wade stated that most horse farms have events on site, but the proposed text amendment is not intended to address those situations.

Ms. Roche-Phillips asked if the proposed text amendment would allow a winery to open a catering business on their existing site. Ms. Wade responded that a winery could do so only if they filed an application with the Board of Adjustment to amend their conditional use permit to include catering. Ms. Roche-Phillips asked if a winery could apply to have a catering business as an accessory use. Ms. Boland answered that, if the Board of Adjustment determined catering to be clearly accessory to the existing winery, then they could choose to approve such a request.

Mr. Owens asked why the proposed text amendment would require a minimum of five parking spaces for catering establishments, even if the business is only 1,000 square feet in size. He noted that he believed that requiring a minimum number of parking spaces, if they were unnecessary, could result in adding impervious surface needlessly; and he would like to see the text refer to a maximum number of parking spaces rather than a minimum. Ms. Wade answered that the proposed parking requirement is what is required for shops of special trade and other similar warehouse uses. She noted that parking maximums are only defined in the established Infill & Redevelopment Area. The staff was reluctant to introduce a new formula for parking calculations solely for catering establishments, and they were also concerned about the parking of semis or other large trucks at some catering establishments.

Director Comments: Mr. King stated that he believed that fees are now charged based upon impervious surface, so there is a disincentive to provide unnecessary paving.

Legal Comments: Ms. Boland stated that catering businesses, by definition, prepare food at their headquarters, and must have a means of transporting it to the location of the event. She stated that she and the staff agreed that five parking spaces should be adequate to accommodate the employees of the business and the occasional customer who might visit the site. Mr. Owens noted that he is concerned globally about the amount of impervious surfaces.

Action: A motion was made by Mr. Paulsen, seconded by Mr. Wilson, and carried 8-0 (Beatty, Brewer, and Holmes absent) to approve the staff alternative text for ZOTA 2011-2, for the reasons provided by staff.

VI. COMMISSION ITEMS

- A. INITIATION OF ZONING ORDINANCE TEXT AMENDMENT** – Mr. Sallee stated that the staff had presented this item to the Commission at their work session one week prior to this hearing. The staff is requesting that the Commission initiate this text amendment for community kitchens, to be heard at some point in the next couple of months.

Action: A motion was made by Ms. Roche-Phillips, seconded by Mr. Paulsen, and carried 6-2 (Beatty, Brewer, and Holmes absent; Cravens and Paulsen opposed) to initiate the Zoning Ordinance text amendment as recommended by staff.

- B. STAFF ITEMS** – Mr. Sallee stated that, as there were no new zone change items to be reviewed at next week's Zoning Committee meeting, the staff would like to suggest that the Commission take action to cancel that meeting.

Action: A motion was made by Mr. Wilson, seconded by Ms. Roche-Phillips, and carried 8-0 (Beatty, Brewer, and Holmes absent) to cancel the May 5, 2011, Zoning Committee meeting.

VIII. AUDIENCE ITEMS – No such items were presented.

IX. MEETING DATES FOR MAY, 2011

Subdivision Committee, Thursday, 8:30 a.m., Planning Division Office (101 East Vine Street).....	May 5, 2011
Zoning Committee, Thursday, 1:30 p.m., Planning Division Office (101 East Vine Street).....	May 5, 2011
Subdivision Items Public Meeting , Thursday, 1:30 p.m., 2 nd Floor Council Chambers.....	May 12, 2011
Work Session, Thursday, 1:30 p.m., 2 nd Floor Council Chambers.....	May 19, 2011
Technical Committee, Wednesday, 8:30 a.m., Planning Division Office (101 East Vine Street).....	May 25, 2011
Zoning Items Public Hearing , Thursday, 1:30 p.m., 2 nd Floor Council Chambers.....	May 26, 2011

- X. ADJOURNMENT** – There being no further business, Chairperson Richardson declared the meeting adjourned at 4:03 p.m.